

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

LES BRADLEY et al.,

Plaintiffs and Appellants,

v.

NETWORKERS INTERNATIONAL LLC,

Defendant and Respondent.

D052365

(Super. Ct. No. GIC862417)

ORDER MODIFYING OPINION
AND DENYING PETITION
FOR REHEARING

NO CHANGE IN JUDGMENT

THE COURT:

The petition for rehearing is denied.

It is ordered that the opinion filed on February 5, 2009, be modified as follows:

1. On page 15, in the final paragraph, before the final sentence which begins "On the basis of the latter finding alone," the following sentence is added:

The court's order and comments at the hearing further support that it found either ground was independently sufficient to justify the denial of the class certification motion.

2. On page 21, second to last sentence of the last paragraph, reading "The court asked plaintiffs' counsel whether it was waiving these claims, but counsel (understandably) declined to do so" is deleted, and replaced with the following:

The court asked plaintiffs' counsel whether he was conceding these claims, and counsel responded that he could "understand" if the court did not "certify the time shaving because it's too individualized"

3. On page 26, at the end of footnote 8, the following text is added:

Plaintiffs' reliance on the recent decision in *Ghazaryan v. Diva Limousine, Ltd.* (2009) 169 Cal.App.4th 1524 is also misplaced. In that case, the court specifically found the trial court had utilized improper criteria in analyzing the class certification motion with respect to ascertainability of the class. (*Id.* at pp. 1530-1533.) Further, the *Ghazaryan* court emphasized its own conclusion that "class treatment constitutes the superior mode of resolving [the plaintiff's] claims in this action." (*Id.* at p. 1538.) However, as a reviewing court, our role is to determine whether the trial court abused its discretion in ruling on the class certification motion, including the various manageability issues, and not to rely on our own independent analysis as to whether we believe class treatment would be appropriate in the particular case. (See *Save-On, supra*, 34 Cal.4th at pp. 326-327.)

There is no change in the judgment.

McCONNELL, P. J.